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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,238	09/17/2003	Eric Kolb	DEP-5156	3713
27777	7590	03/29/2006	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			KIM, JOHN	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/664,238	Applicant(s) KOLB ET AL.	
	Examiner John Kim	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 9, 11 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 12-23, 25-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/27/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

It is noted the IDS submitted by the applicant on 12/27/05 has a reference already cited by the examiner (submitted with the previous office action dated 9/16/05).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 10, 22, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sevrain (US Pat Pub 2003/0229348, cited in the previous office action) in view of Jackowski (WO 00/22999 in French, corresponding US Pat 6565571, cited in the previous office action).

Sevrain teaches of having a spinal fixation plate with two different sections that mate and have a bore formed to receive a bone anchor (see figures 7-10) (claim 1, 22). Sevrain teaches of having the two sections can adjust along a longitudinal axis of the plate. Furthermore, Sevrain teaches of having a pin (218) and slot (232) (paragraph 62) (claim 10). Sevrain fails to teach of having a plate with various cant angles (claims 1-8, 22, 23). Jackowski teaches of having a plate with various cant angles. This facilitates installation of the plate. It would have been obvious to one skilled in the art at the time the invention was made to construct the plate of Sevrain including the various

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cant angles in view of Jackowski, in order to facilitate the installation of the plate by matching the contour of the vertebrae of the patient. It is noted that in the previous office action, the examiner stated the "canting of a bone plate to conform to a natural bone surface is old and well-known practice" with a list of examples of prior art.

Claims 12-20, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sevrain (US Pat Pub 2003/0229348, cited in the previous office action) and Jackowski (WO 00/22999 in French, corresponding US Pat 6565571, cited in the previous office action) as applied to claims 1 and 22 above, and further in view of Wagner et al. (US Pat 6454769, in the IDS).

The combination of Sevrain and Jackowski discloses the claimed apparatus except for having a first and second bore axis in different or parallel angles, having a polyaxial bushing, an opening in the plate to see the graft, and an intermediate section with a bore. Wagner discloses of having a polyaxial bushing, being able to have axial bores in different or parallel angles, having a plate with an opening to see the graft, and having an intermediate section with a bore. It would have been obvious to one skilled in the art at the time the invention was made to construct the plate of Sevrain as modified by Jackowski, including a polyaxial bushing (figure 12), having axial bores of different angle (figure 2-4), an opening in the plate (figure 1), and having a bore in the intermediate section in view of Wagner, to allow the user to tilt the bone anchors at an angle to guide them to a more stable, center of mass position in each vertebral body,

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allow visualization of the graft, and stronger attachment of the plate with a middle section having a bore.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sevrain (US Pat Pub 2003/0229348, cited in the previous office action) and Jackowski (WO 00/22999 in French, corresponding US Pat 6565571, cited in the previous office action) as applied to claim 1 above, and further in view of LeHuec et al. (US Pat 6793658, cited in the previous office action).

The combination of Sevrain and Jackowski discloses the claimed apparatus except for having a fin. LeHuec teaches of having a plate with a fin (24, figure 2), which helps hold the plate in place. Thus, it would have been obvious to one skilled in the art at the time the invention was made to construct the plate of Sevrain as modified by Jackowski, including a fin in view of LeHuec to help with positioning the plate.

Claims 27-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sevrain (US Pat Pub 2003/0229348, cited in the previous office action) in view of Wagner et al. (US Pat 6454769, in the IDS).

As discussed above for claims 1 and 22, Sevrain teaches of having 2 sections of a plate with bores, a dynamic connection mechanism with a pin and slot, and the 2 sections being able to move in the longitudinal axis with respect to each other. Sevrain fails to teach of having a polyaxial bushing. As discussed above, Wagner teaches of having a polyaxial bushing, where the bushing has a slot for expansion, a plurality of

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ridges, generally spherical in shape, has a passage for an anchor, and a smooth radially interior surface (see figure 12). Furthermore, Wagner teaches that the bores can be angled such that the axis would intersect distal to the vertebrae (fig 6). Thus, it would have been obvious to one skilled in the art at the time the invention was made to construct the plate of Sevrain with the polyaxial bushing and angled bores in view of Wagner in order to place the bone anchors at any angle the user wants to maintain proper stabilization of the plate with respect to the bone.

Claims 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackowski (WO 00/22999 in French, corresponding US Pat 6565571, cited in the previous office action) in view of Wagner et al. (US Pat 6454769, in the IDS).

As discussed above, Jackowski teaches of having a plate with sections, each section having a bore and canted. Jackowski fails to teach of having an opening. As discussed above, Wagner teaches of having an opening (figure 1 and 8) formed between the bores of each section. This allows the user to visualize the graft. Thus, it would have been obvious to one skilled in the art at the time the invention was made to construct the plate of Jackowski with an opening in view of Wagner in order for the user to visualize the graft easily.

Response to Arguments

Applicant's arguments with respect to claims 1-38 have been considered but are moot in view of the new ground(s) of rejection. Please see above.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kim whose telephone number is (571) 272-2817. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JK 


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER